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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

THIER, MICHAEL

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,989

Applicant(s)

MIERNIK ET AL.

Examiner

Michael T. Thier

Art Unit

2617

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,5,6,8,9,11,12,14,15,17-19,21-29 and 31-39 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 21-29 and 31-39 is/are allowed.
6) ☒ Claim(s) 3,5,6,8,9,11,12,14,15 and 17-19 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 5-6, 8-9, 11-12, 14-15, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marinho et al (JP02000209298A) in view of Baum et al (US 2002/0024964A1) and Richter et al (US 2002/0194251).

Consider claims 5-6, 11-12, and 17-19. Marinho teaches a method and system for upgrading service class of connections in a wireless network, comprising identifying a congested CoS in a sector of a wireless network (page 1 of the detail description, paragraphs 3-7; page 3 of the detail description, paragraph 19); determining bandwidth availability in the sector of the wireless network at an enhanced CoS in relation to the congested CoS (page 1 of the detail description, paragraphs 6-7; page 4 of the detail description, paragraphs 22-25); selecting a communications session in the congested CoS for upgrading (page 1 of the detail description, paragraphs 6-7; page 4 of the detail description, paragraphs 22-25); and upgrading the communications session to the enhanced CoS (page 1 of the detail description, paragraphs 6-7; page 4 of the detail

description, paragraphs 22-25; pages 5-6 of the detail description, paragraph 33).

Marinho does not clearly teach upgrading the communications session to the enhanced CoS by modifying a CoS identifier of one or more packets of the communications session.

Baum teaches upgrading the communications session to the enhanced CoS by modifying a CoS identifier of one or more packets of the communications session (pages 11-12, paragraphs [0183]- [0184]; page 13, paragraph [0199]; fig. 20).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Baum into the teachings of Marinho in order to provide an improved techniques that aggregate a large number of physical connections, for presentation to a small number of high bandwidth ports and to provide a transport network in which customer data is private and secure.

Marinho in view of Baum does not clearly teach determining the performance increase available to the connection by upgrading its service class from the base class to the upgraded class based on packet delay of at least one or both of the base service class and the upgraded service class.

Richter teaches the congested CoS is identified based on at least one of the dropped packet, a floating average of a queue size and a current queue size for the CoS in the sector (class queue; pages 44-45, ¶ 362, 366-367) for the purpose of managing of resource utilization. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of

Richter into the teachings of Marinho in view of Baum for the purposes mentioned above.

Consider claims 3, 15, 9. Richter further teaches the limitations of these claims in (page 39, ¶ 324-327; page(s) 44, ¶ 362 and page(s) 45, ¶ 366).

Consider claims 8, 14. Marinho further teaches accessing a policy information base (database 160) comprising service policies for communication sessions in the congested CoS (pages 5-6 of the detail description, paragraph 33); identifying an upgradeable connection based on the service policy (pages 2-3 of the detail description, paragraphs 10-15); and selecting the upgradeable communication sessions for upgrading (pages 2-3 of the detail description, paragraphs 10-15).

Allowable Subject Matter

3. Claims 21-29, and 31-39 are allowed over the prior art of record.

Response to Arguments

4. Applicant's arguments filed 4/10/2006 have been fully considered but they are not persuasive.

Applicant argues that Richter does not disclose, teach or suggest “identifying a congested CoS in a sector of a wireless network, wherein the congested CoS is identified based on at least one of the following: dropped packets, a floating average of a queue size, and a current queue size for the CoS in the sector.”

In response to this argument, the examiner respectfully disagrees with the applicants interpretation of the previous non-final rejection and the interpretation of the

Richter reference. In the previous non-final office action the examiner had asserted that the primary reference Marinho "...teaches a method and system for upgrading service class of connections in a wireless network, ***comprising identifying a congested CoS in a sector of a wireless network*** (page 1 of the detail description, paragraphs 3-7; page 3 of the detail description, paragraph 19)" (taken from page 2 of the non-final office action with emphasis added) and that the Richter reference, in combination with the Marinho and Baum references taught **"the congested CoS is identified based on at least one of the dropped packet, a floating average of a queue size and a current queue size for the CoS in the sector (class queue; pages 44-45, ¶ 362, 366-367)"**. Therefore, the limitation that the applicant is arguing was shown as a combination of the references and not explicitly in the Richter reference. To further clarify the Marinho reference in par. 006 explains that a class of service (CoS) can be reduced, therefore reducing the quality of service (i.e. downgrading class). In par. 19 he explains, "A base station 84 detects the latency of the overload of a system thru/or a resource (120)", which the examiner had explained reads on "identifying a congested CoS in a sector of a wireless network" (claimed limitation). Since the base station detects an overload, this clearly would be understood as "congested". The examiner did not show that the Marinho reference taught the idea of the identifying being done by one of dropped packets, a floating average of a queue size, and a current queue size for the CoS in the sector, and for these reasons the Richter reference was combined. Richter shows a "congested" CoS identified based on a current queue size for the CoS. Specifically see paragraph 367 on page 45, which the examiner previously cited for this

limitation. Richter explains that his system has a maximum queue size threshold, and that lower priority queues may be dropped if the system becomes overloaded (i.e. congested). Therefore, this clearly reads on the limitation that the "congested CoS is identified based on....a current queue size for the CoS in the sector". The examiner also stated the motivation for doing this would have been to aid in the managing of resource utilization.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael T. Thier whose telephone number is (571) 272-2832. The examiner can normally be reached on Monday thru Friday 8am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael T Thier
Examiner
Art Unit 2617

6/6/2006



GEORGE ENG
SUPERVISORY PATENT EXAMINER